

DEBRA ELLWOOD MEPPEN (SBN: 183885)
dmeppen@gordonrees.com
ANTHONY J. BELLONE (SBN: 119450)
abellone@gordonrees.com
LINH T. HUA (SBN 247419)
lhua@gordonrees.com
GORDON & REES LLP
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071
Telephone: (213) 576-5000
Facsimile: (213) 680-4470

Attorneys for Defendant
FIELD NATION, LLC

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FERERRI D'ANGELO, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

ITOK, INC., a corporation; and FIELD
NATION, LLC, a limited liability
company

Defendants.

Case No. 15CV1899-CAB-MDD

**DEFENDANT FIELD NATION,
LLC'S NOTICE OF MOTION
AND MOTION FOR
DETERMINATION OF GOOD
FAITH SETTLEMENT;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT THEREOF**

Hon. Mitchell D. Dembin
Date: April 6, 2016
Time: 2:30 PM
Courtroom: 11th Floor

Accompanying Papers:

- 1) Declaration of Linh T. Hua in
Support of Motion for
Determination of Good Faith
Settlement
- 2) [Proposed] Order

Gordon & Rees LLP
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071

**TO THIS HONORABLE COURT, TO ALL PARTIES, AND THEIR
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on April 6, 2016 at 2:30 p.m. or as soon thereafter as the matter may be heard before the Honorable Mitchell D. Dembin of the 11th Floor of the above-entitled Court, located at 333 West Broadway, San Diego, CA 92101, Defendant Field Nation, LLC will and hereby does move for a determination of good faith settlement, pursuant to California Code of Civil Procedure sections 877, 877.6, and *Tech-Bilt, Inc. v. Woodward Clyde & Associates*, 38 Cal.3d 488 (1985).

This motion is based on the Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities in support of the Motion for Determination of Good Faith Settlement, and all pleadings and papers on file in this action, and upon such other oral and documentary evidence as may be presented at the hearing on this motion.

Dated: February 16, 2016

GORDON & REES, LLP

/s/ Linh T. Hua

Linh T. Hua

E-mail: lhua@gordonrees.com

Attorneys for Defendant Field Nation, LLC

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MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR
DETERMINATION OF GOOD FAITH SETTLEMENT

I. INTRODUCTION

Following the filing of Plaintiff D'Angelo Fererri's ("Plaintiff") Complaint against Defendant ITOK, Inc. ("ITOK") and Defendant Field Nation, LLC ("Field Nation"), Plaintiff and Field Nation have entered into a confidential settlement agreement in which Plaintiff will receive \$6,000 in exchange for a release of claims against Field Nation and the dismissal of Field Nation from this Action, with prejudice. Pursuant to California Code of Civil Procedure sections 877, 877.6, and *Tech-Bilt, Inc. v. Woodward Clyde & Associates*, 38 Cal.3d 488 (1985), Field Nation moves this Court for a determination of good faith settlement to avoid duplicitous litigation from potential cross-claims for joint liability, should any exist.

II. RELEVANT SUMMARY OF FACTS

On August 28, 2015, Plaintiff filed a hybrid Fair Labor Standard Act ("FLSA") and Class Action Complaint in the United States District Court for the Southern District of California against two named Defendants, ITOK, Inc. and Field Nation, LLC ("Action"). The nine causes of action include wage and hour claims under the FLSA, California law, and Minnesota law. On October 6, 2015, ITOK filed an Answer to the Complaint, and on October 14, 2015, Field Nation filed an Answer to the Complaint.¹

Following a stipulated continuance, the Parties appeared before Magistrate Judge Mitchell D. Dembin for the Early Neutral Evaluation Conference on

¹ Declaration of Linh Hua in Support of Motion for Determination of Good Faith Settlement, "Hua Decl.," ¶ 2.

December 23, 2015. Although the Parties did not reach a settlement at that Early Neutral Evaluation Conference, they were strongly encouraged to continue efforts toward early resolution. Thereafter, to further settlement discussions, ITOK and Field Nation separately received settlement demands from Plaintiff.²

On January 29, 2016, the Parties appeared before Magistrate Judge Dembin for a Case Management Conference during which Plaintiff informed the Court that Plaintiff and Field Nation had reached an individual settlement. As of that date, Plaintiff and ITOK had not reached a settlement. To date, the Court has not certified any proposed class alleged in the Complaint.³

III. LEGAL ARGUMENT

A. State Substantive Law Applies to Determine a Good Faith Settlement in Federal Court

When a district court sits in diversity or hears state law claims based on supplemental jurisdiction, the Court applies state substantive law. *See Galam v. Carmel (In re Larry's Apartment)*, 249 F.3d 832, 837 (9th Cir. 2001). In determining whether federal law should preempt state law, the Supreme Court has instructed that “matters left unaddressed in [a comprehensive and detailed statutory scheme] are presumably left to the disposition provide by state law.” *O'Melveny & Myers v. F.D.I.C.*, 512 U.S. 79, 85 (1994).

This court has held that California Code of Civil Procedure section 877 constitutes substantive law, and a settling party may seek a determination that a settlement was made in good faith in federal court. *See Fed. Savings & Loan Ins. Corp. v. Butler*, 904 F.2d 505, 511 (9th Cir. 1990).

² Hua Decl., ¶ 3.

³ Hua Decl., ¶ 4.

B. The Settlement was Made in Good Faith under Section 877.6 and Satisfies the *Tech-Bilt* Factors

California Code of Civil Procedure Section 877.6 provides that for settlements in which a confidentiality agreement has been entered into, the “issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing..., or the court may, in its discretion receive other evidence at the hearing.” Cal. Code Civ. Proc. § 877.6(b). A determination under Sections 877 and 877.6 “shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.” Cal. Code Civ. Proc. § 877.6(c). Where a release is given in good faith, it “shall discharge the party to whom it is given from all liability for any contribution to any other parties.” Cal. Code Civ. Proc. § 877(b). Thereby establishing that the settlement has finality and avoiding the potentially endless circularity of cross-claims among different defendants.

In its seminal decision, *Tech-Bilt, Inc. v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the California Supreme Court outlined a standard for determining a good faith settlement, requiring it to be within the reasonable range of the settling entity’s share of liability to Plaintiff. The *Tech-Bilt* Court laid out the following factors that may be relevant in determining good faith pursuant to Code of Civil Procedure section 877: (a) “a rough approximation of plaintiffs’ total recovery and the settlor’s proportionate liability”; (b) “the amount paid in settlement”; (c) “the allocation of settlement proceeds among plaintiffs”; (d) “a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial”; (e) “the financial conditions and insurance policy limits of settling defendants”; (f) “the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants”; and (g) that the settlement “must not be grossly disproportionate to what a reasonable person, at the time of

the settlement, would estimate the settling defendant's liability to be.” *Tech-Bilt*, 38 Cal. 3d at 499.

1. Plaintiff’s Approximate Total Recovery and Field Nation’s Proportionate Liability

Field Nation owns a website and software platform that allows users to connect for purposes to posting work orders or receiving payment after completing work orders. Users like Plaintiff create profiles on Field Nation’s website to market their skills (essentially posting a resume) and their availability to complete work orders in exchange for payment. Users like ITOK create profiles on Field Nation’s website to list work orders that need to be completed for their customers in exchange for payment. As part of the website and software platform, Field Nation also issues payment from users like ITOK to users like Plaintiff and receives a service fee for use of the website.⁴ In part, it is based on these facts that Plaintiff names Field Nation as a defendant in his Complaint.

Plaintiff’s Complaint pleads nine wage and hour causes of action, including: (1) failure to pay wages for all hours worked under the FLSA; (2) failure to pay overtime wages under the FLSA; (3) failure to pay all wages owed under California law; (4) failure to pay overtime wages under California law; (5) unlawful deductions from pay under California law; (6) failure to furnish timely and accurate wage statements under California law; (7) failure to pay final wages under California law; (8) unlawful business practices under California’s Business and Professions Code; and (9) unlawful deductions from pay under Minnesota law. All of Plaintiff’s wage and hour claims are contingent on the allegation that Plaintiff was as “Technology Advisor” who was misclassified as an independent contractor and should have been paid as an employee. In the Complaint, all nine causes of action extend to one of three proposed classes: (1) FLSA Class; (2)

⁴ Complaint, ¶ 17; Hua Decl., ¶ 5.

1 California Class; and (3) Minnesota Class.⁵

2 As to Field Nation, the Complaint states, “Field Nation acts as a broker
3 supplying technologically savvy individuals to companies that have a need for
4 technical services.”⁶ Specifically, “Field Nation supplied ITOK with Technical
5 Advisors.”⁷ Notably, the Complaint does not allege facts the support that an
6 employer-employee relationship existed between Field Nation and Plaintiff.

7 Plaintiff completed 31 work orders for ITOK through Field Nation’s website
8 from approximately April 2014 through June 2015.⁸ In or around August 2015,
9 Plaintiff filed an unemployment claim against ITOK with the Employment
10 Development Department for the State of California (“EDD”).⁹ After completing
11 an independent audit, the EDD found that Field Nation was not the employer and
12 determined that “Field Nation, LLC is the payroll agent for ITOK, Inc.”¹⁰

13 The EDD’s finding that Field Nation was not Plaintiff’s employer is
14 consistent with the Master Services Agreement entered into between ITOK and
15 Field Nation in March 2012, stating: “For the avoidance of doubt, the parties
16 hereby acknowledge and agree that the Technicians are not employees, agents or
17 representatives of [Field Nation].”¹¹ Furthermore, Field Nation’s Provider Terms
18 and Conditions,¹² entered into between Field Nation and Plaintiff, states:

- 19 • “[Plaintiff] is an independent contractor who uses the Platform to
20 offer services and to perform work on specific projects for [Other
21 Users].”
- 22 • “Field Nation has no direct responsibility for the scope, nature, quality

24 ⁵ Hua Decl., ¶ 6.

25 ⁶ Complaint, ¶ 10.

26 ⁷ Complaint, ¶ 11.

27 ⁸ Hua Decl., ¶ 8.

28 ⁹ *Id.*

¹⁰ Hua Decl., Exh. 1. Field Nation makes no representation as to the validity or accuracy of any claims by Plaintiff against ITOK.

¹¹ Hua Decl., Exh. 2.

¹² Hua Decl., Exh. 3.

1 or character of any work or services performed by [Plaintiff].”

- 2 • “Field Nation is not an employer or joint employer of [Plaintiff].”
- 3 • “Field Nation is not responsible for the performance or non-
- 4 performance of [Other Users] or [Plaintiff].”
- 5 • “[Plaintiff] acknowledges and agrees that [Plaintiff] is not an
- 6 employee of Field Nation.”
- 7 • “Field Nation will not conduct any investigation, certification, or
- 8 verification of the skills, qualifications, background, and experience
- 9 of [Another User] for [Plaintiff].”
- 10 • “Field Nation does not own any information, text, data, or other
- 11 content that [Plaintiff] submits, stores, or uses in [Plaintiff’s] profile,
- 12 including all Work Order information.”
- 13 • “[Plaintiff] shall have sole responsibility for the accuracy, quality,
- 14 integrity, legality, reliability, appropriateness, and intellectual
- 15 property ownership or right to use of all [Plaintiff’s] Data.”

16 Given those facts provided above, Field Nation adamantly denies that an
 17 employer-employee relationship existed between Field Nation and Plaintiff. Where
 18 an employer-employee relationship does not exist, Field Nation is not liable for
 19 wage and hour claims, and Plaintiff’s approximate total recovery from Field
 20 Nation is zero dollars.¹³ To the extent an employer-employee relationship exists
 21 with Plaintiff and another entity, Field Nation’s proportionate liability as the
 22 payroll agent is also zero dollars. Simply stated, Field Nation is not liable for wage
 23 and hour claims to Plaintiff because Plaintiff was not Field Nation’s employee.

24 Nevertheless, given Field Nation’s desire to mitigate attorneys’ fees and
 25 litigation costs with the anticipated distribution of an FLSA notice and motion for

26 ¹³ Hua Decl., ¶¶ 11-12, Exh. 4. – The EDD issued a Statement of Account finding that
 27 ITOK was liability to Plaintiff (with tax, penalties, and interest), for the period from June 2014
 28 through March 2015, to be approximately \$10,000. Although this determination is strongly
 disputed by ITOK, it was a factor considered as Plaintiff’s approximate total recovery. Field
 Nation makes no representation regarding any liability ITOK may or may not have to Plaintiff.

conditional certification, and understanding the risks at trial, Field Nation has agreed to pay Plaintiff \$6,000 in exchange for a release of claims and dismissal of Field Nation from the Action.¹⁴

2. The Amount Paid in Settlement is Fully Allocated to Plaintiff in Recognition of the Risks at Trial.

Plaintiff and Field Nation have entered into a confidential settlement agreement which provides a general release of Field Nation in an exchange for a payment of \$6,000 to Plaintiff. Additionally, Plaintiff has agreed to dismiss Field Nation from this Action, with prejudice, after payment of the settlement amount.¹⁵

Field Nation recognizes the risk of escalated attorneys' fees and litigation cost through jury trial. Given the sometimes unpredictable nature of a jury, the settlement amount represents a compromise to conserve the resources of the Parties, the Court, and the citizen jurors.¹⁶ It is not grossly disproportionate to what a reasonable person, at the time of settlement, might estimate Field Nation's liability to be.

3. Financial Conditions and Insurance Policy Limits of Field Nation

Field Nation does not have an insurance policy that pays any share of the settlement amount. Field Nation's financial condition is such that it is able and willing to pay the settlement amount to Plaintiff. The settlement was not entered into based on Field Nation's ability, or lack thereof, to pay.¹⁷

4. There is No Collusion, Fraud, or Tortious Conduct Aimed to Injure the Interests of ITOK

Following an unsuccessful Early Neutral Evaluation Conference, both ITOK and Field Nation were advised that Plaintiff separately pursued settlement

¹⁴ Hua Decl., ¶ 13.

¹⁵ Hua Decl., ¶ 14.

¹⁶ Hua Decl., ¶ 15.

¹⁷ Hua Decl., ¶ 16.

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633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071

discussions with the two named Defendants. The settlement discussions between Plaintiff and the separate Defendants were expressly communicated as confidential under the mediation privilege. However, both ITOK and Field Nation had similar opportunities to separately resolve claims with Plaintiff. The confidential Settlement Agreement between Plaintiff and Field Nation does not discuss ITOK, does not contain illegal provisions, and does not contain terms that would affect any settlement discussions between Plaintiff and ITOK. Furthermore, settlement discussions focused on those facts alleged in the Complaint, information equally available to all Parties in the public record and discovery. At the Case Management Conference, the Court and ITOK were notified that Plaintiff and Field Nation had reached an individual settlement agreement.¹⁸

Pursuant to California Code of Civil Procedure Section 877.6(c), should the Court determine that the settlement was made in good faith, any other joint tortfeasor or co-obligor is barred from any further claims for equitable comparative contribution, or partial or comparative indemnification, based on comparative negligence or comparative fault. To the extent ITOK intends to oppose this motion, ITOK carries the burden to show that the settlement was made in bath faith. “A party asserting the lack of good faith shall have the burden of proof on that issue.” Cal. Code of Civ. Proc. § 877.6(d). The party asserting the lack of good faith may demonstrate that the settlement is so far “out of the ballpark” in relation to those factors listed above as to be inconsistent with the equitable objectives of the statute. *Tech-Bilt, Inc.*, 38 Cal. 3d at 499-500.

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¹⁸ Hua Decl., ¶ 17.

1 **IV. CONCLUSION**

2 Field Nation respectfully requests that this Court enter an Order granting a
3 determination that the settlement between Plaintiff and Field Nation was made in
4 good faith pursuant to California Code of Civil Procedure section 877.6 and *Tech-*
5 *Built, Inc. v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488.

6
7 Dated: February 16, 2016

GORDON & REES, LLP

8 /s/ Linh T. Hua

9 Linh T. Hua

10 E-mail: lhua@gordonrees.com

11 *Attorneys for Defendant Field Nation, LLC*

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Gordon & Rees LLP
633 West Fifth Street, 52nd Floor
Los Angeles, CA 90071